IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 5097 of 2006(F)

PETITIONER:

VAVA RAJAPPAN, AGED 75, S/O. VAVA,
KALARIPARAMPATH VELIYIL, MUHAMMA P.O.,
ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

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1. THE UNION OF INDIA REPRESENTED BY
THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NEW DELHI.

2. THE UNDER SECRETARY TO GOVERNMENT OF
INDIA, FREEDOM FIGHTER'S DIVISION,
MINISTRY OF HOME AFFAIRS, NEW DELHI.

3. THE STATE OF KERALA, REPRESENTED
BY THE PRINCIPAL SECRETARY TO GOVERNMENT
GENERAL I ADMINISTRATION DEPARTMENT,
THIRUVANANTHAPURAM.

4. THE DISTRICT COLLECTOR, ALAPPUZHA.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR FOR R1 & R2.
GOVERNMENT PLEADER SRI.P.A. SALIM FOR R3 & 4.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:-

Ext.P1:- **Copy of the application of the petitioner dtd.29-4-1998.**

Ext.P2:- **Copy of the true extract of the Convict Register of the Central Prison, Trivandrum dtd.16-9-1950 issued by the Superintendent, Central Prison, Trivandrum.**

Ext.P3:- **Copy of the order granting pension to the petitioner by the 4th respondent dtd.1-3-1983.**

Ext.P4:- **Copy of the order passed by the 2nd respondent dtd.12-2-2004.**

Ext.P5:- **Copy of the report of the Tahsildar, Cherthala dtd.24-7-1981.**

Ext.P6:- **Copy of the copy application and the order in CC.No.17/1125 M.E. dated 29-8-2006 of the Judicial First Class Magistrate Court, No.I, Cherthala.**

Ext.P7:- **Copy of the letter issued by the Joint Secretary to the Government of India dtd.7-4-2003.**

Ext.P8:- **Copy of the pension application dtd.11-8-1980 filed by the petitioner.**

Ext.P9:- **Copy of the true extract of the convict register relating to Kochukutty Raghavan issued by the Superintendent of Central Prison, Thiruvananthapuram dtd.nil.**

Ext.P10: **Copy of the Judgment in WP(C).No.32076/2006 dtd.24/8/2007.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.A. TO JUDGE.

kvs/-

T.R. Ramachandran Nair, J.

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W.P.(C).NO.5097 of 2006-F

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Dated this the 2nd day of November, 2007

JUDGMENT

The petitioner is an applicant for grant of pension under the Swathanthratha Sainik Samman Pension Scheme. He was an active participant of the Punnapra – Vayalar struggle. It is averred that to avoid warrant of arrest, he remained underground for several months and later he was arrested by the police and tried by the First Class Magistrate's Court, Cherthala. He was convicted by the said court and consequently he was imprisoned in the Central Prison, Trivandrum from 16.1.1950 to 16.9.1950. Ext.P1 is the application for grant of pension under the Central Scheme. The petitioner produced true extract of the Convict Register of Central Prison, Trivandrum dated 16.9.1950 (Ext.P2). The District Collector had granted pension to him as per Ext.P3 order dated .3.1983, which according to the petitioner, is only for the participation in the Punnapra – Vayalar struggle.

2. The petitioner's application for pension was rejected by the Central Government as per Ext.P4. The reason for rejection apparently is that the State Government has not recommended his

claim. The State did not recommend his case mainly for the reason that the case No.17/125 is not related to the Punnapra – Vayalar struggle and the Personal Knowledge Certificates issued by Shri Kunjan Sukumaran and Shri Ittyathi Vasudevan cannot be accepted and the petitioner did not produce the Non-availability of Records Certificate.

3. Learned counsel for the petitioner submits that the reasons stated in Ext.P4 are not correct. He invited my attention to Ext.P5 which is the report dated 24.7.1981 forwarded by the Tahsildar, Cherthala to the District Collector, Alappuzha concerning his application for grant of pension under the State Scheme. Column No.2 (a) refers to his period of imprisonment as one year. Therein also, his claim is supported by the extract of the Convict Register from the Central Prison, Trivandrum. In column No.5, the Tahsildar has recommended the application stating that he was an active worker of freedom fight in Punnapra – Vayalar struggle. Reliance is also placed on the certificate from Shri S. Damodaran, Ex. M.L.A. Learned counsel also relied on Ext.P7 dated 7.4.2003. The same is a letter sent by the Central Government informing the State Government that the cases of freedom fighters of Punnapra – Vayalar struggle would be

covered under the Scheme even if the imprisonment period of freedom fighters had extended beyond independence and in other words, the condition of imprisonment of six months in the main land jails before independence would not apply in case of Punnapra – Vayalar struggle being a movement for merger of erstwhile Princely State, and even if the entire period of claimed suffering was after independence, it will be covered under the Scheme. Therefore, learned counsel contends that the stand taken that the conviction is after independence, is totally without any justification.

4. The State Government has filed a counter affidavit, wherein there is an averment in paragraph 3 that in the State pension application the petitioner had submitted that his imprisonment was not in connection with the Punnapra – Vayalar struggle and hence he is not eligible for S.S.S. Pension. It is also averred that his conviction in C.C. NO.17/125 is after independence and hence it is difficult to believe that the case relates to Punnapra – Vayalar Struggle.

5. The petitioner has produced along with I.A. No.14027/2007, Ext.P8 form of application submitted by him to the District Collector, Alleppey dated 11.8.1980 relating to the grant of pension under the

State Scheme. Therein, the name of the freedom movement is clearly stated as Punnapra – Vayalar struggle. Of course, his underground suffering is mentioned therein. Ext.P10 is the judgment of this court in Writ Petition No.32076/2006 wherein, in a similar case for grant of pension, this court, after referring to the similar type of documents, held that the petitioner therein is entitled to grant of pension under the Central Scheme. Learned counsel points out that the petitioner in Writ Petition No.32076/2006 was the first accused in C.C. No.17/125 and the Convict Register relating to that person has also been produced in this case as Ext.P9. A reference to Ext.P9 will show that the name of the convict is Kochukutty Raghavan who was the first accused in C.C. No.17/125 and his convict number is 1279. The offence alleged is under Sections 9(1) and 9(5) of Ordinance No. V of 1125 . It is the same as far as the petitioner herein is concerned, which is evident from Ext.P2. The convict number of the petitioner is 1280. Column No.3 in Exts.P2 and P9 shows the date of admission into the jail as 16.1.1950 which is the same in both the documents.

6. In the light of the above clear evidence, the case of the petitioner for grant of pension under the Central Scheme ought to have

been recommended by the State Government. It is not disputed at all that the petitioner was granted pension under the State Scheme for his participation in the Punnapra – Vayalar struggle. Therefore, the stand taken by the District Collector that the case is not related to Punnapra – Vayalar Struggle, cannot be accepted at all.

7. Therefore, Ext.P4 is quashed. There will be a direction to the third respondent to forward a verification-cum-entitlement report recommending the case of the petitioner for grant of pension under the SSS Pension Scheme after examining the documents mentioned above. For enabling the authority to do so, the petitioner shall produce the various documents mentioned above along with a copy of this judgment. The recommendation shall be made within a period of six weeks from the date of production of a copy of this judgment. Within two months from the receipt of the recommendation from the State Government, the Central Government shall process the application of the petitioner and pass final orders in the light of the recommendation and other documents forwarded by the State Government. While

sanctioning pension, the claim for pension from the date of receipt of the application, Ext.P1 also will be considered.

The Writ Petition is allowed as above.

(T.R. Ramachandran Nair, Judge.)

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